UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

WATERLAND TILE CO.

Employer

and **CASE GR-7-RC-22474**

INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 9, AFL-CIO,

Petitioner

APPEARANCES:

Timothy J. Ryan, Attorney, of Grand Rapids, Michigan, for the Employer
John G. Adam, Attorney, of Southfield, Michigan, for the Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[1] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

[1] The Employer and Petitioner have filed briefs, which were carefully considered.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The parties stipulated to the appropriateness of the petitioned-for unit of three full-time and regular part-time tile mechanics and helpers who were employed by the Employer prior to April 30, 2003 at its Traverse City, Michigan facility. However, the Employer contends that no election should be held because the three employees were indefinitely laid off on April 30, 2003, and the Employer no longer employs any employees in the proposed unit. Because no question of representation exists, I dismiss the petition.

The Employer sells floor coverings from its Traverse City store and provides installation when requested by the customer. For decades, the Petitioner has represented a small crew of employees who install tile and marble flooring for the Employer. A second crew, represented by the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, installs carpet, wood, and vinyl flooring.[2] Both units of employees were covered by Section 8(f) contracts which expired on April 30, 2003.

The Employer asserts that in about December 2002, because it had been losing money for several years, it decided to terminate its installation workforce and subcontract the installation work to obtain better control over labor costs. According to the Employer, subcontractors charge by the square foot, so the cost of a job is fixed based on size. Its employees were paid by the hour. Thus, if a job took longer than estimated, labor costs rose and reduced the Employer's pre-calculated profit.

The Employer sent a letter dated February 4, 2003 to the Petitioner stating that it was terminating its collective bargaining agreement when the agreement expired on April 30, 2003. Prior to receiving this letter, the Petitioner sent a letter to the Employer on February 10, stating it desired to change, alter and amend the current collective bargaining agreement. On March 10, the Employer responded to the Petitioner's February 10 letter. The Employer said it had sent a letter "[s]tating our intention to terminate the agreement" and that it had "no obligation [t]o meet with [the Petitioner] for the purpose of negotiating a new collective bargaining [a]greement and we decline to do so." The Employer's attorney then sent a letter to the Petitioner on April 18, stating the Employer's relationship with the Petitioner would terminate on April 30. On about April 23, the Employer notified the unit employees and the employees represented by the Carpenters union that they would be indefinitely laid off as of 5:00 p.m. on April 30.

[2] These employees are not the subject of this petition.

Since April 30, the Employer has used a small number of subcontractors to finish installation started prior to that date and when installation is requested by its customers. When a customer purchases flooring and requests installation, the Employer usually gives the customer a printed sheet containing the names of several contractors for the customer to contact and make their own arrangements. In the limited circumstances when a customer requests the Employer install the flooring, the Employer provides the installation through one of the contractors on the list and bills the customer for the cost of installation to the Employer.

The Petitioner filed the unfair labor practice charge in Case GR-7-CA-46318 on June 11. The allegation relevant to the instant petition alleged the Employer violated Section 8(a)(3) of the Act by indefinitely laying off all union-represented employees on April 30, upon the expiration of the collective bargaining agreement, and by refusing to offer or consider them for rehire as regular employees or as subcontractors. I dismissed that allegation on August 20. The Petitioner appealed said dismissal, and the appeal was denied by the General Counsel on October 8.

The Board has consistently held it will not conduct an election when the permanent layoff of all unit members is "imminent and certain." **Hughes Aircraft Co.**, 308 NLRB 82, 83 (1992). Here, all the employees in the petitioned-for unit were permanently laid off as of April 30, 2003 and there are no employees in that unit. Therefore, no question of representation exists. Accordingly,

IT IS ORDERED, based on the foregoing and the entire record, that the petition is **DISMISSED.**[3]

Dated at Detroit, Michigan, this 18th day of November 2003.

(SEAL)

/s/ Stephen M. Glasser_____
Stephen M. Glasser, Regional Director
National Labor Relations Board, Seventh Region
Patrick V. McNamara Federal Building
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Detroit, Michigan 48226

Classification

301-5000
347-8020-8000

[3] Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, National Labor Relations board, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by **December 2, 2003**.